

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR,
INC.,

Defendants.

Case No. 2:21-CV-463-JRG

JURY TRIAL DEMANDED

**NETLIST INC.'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL
SUMMARY JUDGMENT ON SAMSUNG'S AFFIRMATIVE DEFENSES**

Samsung's letter states in the first paragraph: "[Samsung defendants] hereby provide notice to plaintiff [Netlist] of products Samsung believes should be marked **with one or more** of U.S. Patent Nos. 10,860,506 ('the '506 patent'), 10,949,339 ('the '339 patent'), 11,016,918 ('the '918 patent'), 11,232,054 ('the '054 patent'), 8,787,060 ('the '060 patent'), and/or 9,318,160 ('the '160 patent')." Dkt. 254-1 at 1 (emphasis added). It is written in the disjunctive, such that it only applies to one or more of the patents without any additional specificity. In the second paragraph it notes that Netlist has accused certain Samsung products: "Netlist identifies the following instrumentalities to infringe the asserted patents: 'DDR4 LRDIMMs, DDR5 LRDIMMs, DDR5 RDIMMs, DDR5 SODIMMs, DDR5 UDIMMs, HBM2 and HBM2E products, and other products that have materially the same structures and designs in relevant parts[.]'". *Id.* In the third paragraph the letter notes that [REDACTED] [REDACTED] *Id.* In the fourth paragraph the letter notes, "Given Netlist's allegations, unmarked SK hynix products include, but are not limited to, Hynix DDR4 LRDIMMs, DDR5 RDIMMs, and HBM, including but not limited to [part numbers]." *Id.* at 2. Moreover, Samsung "asserts that Netlist is aware of specific SK hynix DDR4 LRDIMMs, DDR5 RDIMMs, and HBM products through the Netlist-SK hynix litigation and through negotiations leading to the license." *Id.* Once again this paragraph does not identify which of the disjunctive list of patents in the first paragraph should be marked for each product. In the fifth paragraph Samsung notes, "The above list constitutes notice under *Artic Cat* that at least the named entities sold specific, unmarked products under license to the '506 and '339 patents." *Id.* No other patents are listed. Samsung is a highly sophisticated entity represented by extremely competent counsel. If it wanted to assert that the SK Hynix products practice more than the '506 and '339 patents, it knew how to do so. It failed to do so. And it must now accept the consequences. Moreover, the suggestion that this was an accident is not credible, because Samsung had the opportunity to correct this when it responded to an interrogatory on the exact subject. It did not correct any alleged mistake to identify additional patents.

Dated: February 24, 2023

Respectfully submitted,

/s/ Jason G. Sheasby

Samuel F. Baxter
Texas State Bar No. 01938000
sbaxter@mckoolsmith.com
Jennifer L. Truelove
Texas State Bar No. 24012906
jtruelove@mckoolsmith.com
MCKOOL SMITH, P.C.
104 East Houston Street Suite 300
Marshall, TX 75670
Telephone: (903) 923-9000
Facsimile: (903) 923-9099

Jason Sheasby (*pro hac vice*)
jsheasby@irell.com
Annita Zhong, PhD (*pro hac vice*)
hzhong@irell.com
Thomas C. Werner (*pro hac vice*)
twerner@irell.com
Andrew Strabone (*pro hac vice*)
astrabone@irell.com
Yanan Zhao (*pro hac vice*)
yzhao@irell.com
Michael W. Tezyan (*pro hac vice*)
mtezyan@irell.com
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Tel. (310) 277-1010
Fax (310) 203-7199

Rebecca Carson (*pro hac vice*)
rcarson@irell.com
IRELL & MANELLA LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660

Attorneys for Plaintiff Netlist, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on February 24, 2023, a copy of the foregoing was served to all counsel of record.

/s/ Yanan Zhao
Yanan Zhao

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that the foregoing document and exhibits attached hereto are authorized to be filed under seal pursuant to the Protective Order entered in this Case.

/s/ Yanan Zhao
Yanan Zhao